

## Forest Service, USDA

## §218.11

specifically violates law, regulation, or policy; suggested remedies that would resolve the objection; supporting reasons for the reviewing officer to consider; and

(6) A statement that demonstrates the connection between prior specific written comments on the particular proposed project or activity and the content of the objection, unless the objection concerns an issue that arose after the designated opportunity(ies) for comment (see paragraph (c) of this section).

### §218.9 Evidence of timely filing.

(a) It is the objector's responsibility to ensure timely filing of a written objection with the reviewing officer. Timeliness must be determined by the following indicators:

(1) The date of the U.S. Postal Service postmark for an objection received before the close of the fifth business day after the objection filing period;

(2) The agency's electronically generated posted date and time for email and facsimiles;

(3) The shipping date for delivery by private carrier for an objection received before the close of the fifth business day after the objection filing period; or

(4) The official agency date stamp showing receipt of hand delivery.

(b) For emailed objections, the sender should receive an automated electronic acknowledgement from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of receipt of the objection, it is the sender's responsibility to ensure timely filing by other means.

### §218.10 Objections set aside from review.

(a) The reviewing officer must set aside and not review an objection when one or more of the following applies:

(1) Objections are not filed in a timely manner (see §§218.7(c)(2)(v) and 218.9).

(2) The proposed project is not subject to the objection procedures in §§218.1, 218.4, 218.20, and 218.31.

(3) The individual or entity did not submit timely and specific written comments regarding the proposed

project or activity during scoping or another designated opportunity for public comment (see §218.5(a)).

(4) Except for issues that arose after the opportunities for comment, none of the issues included in the objection are based on previously submitted specific written comments and the objector has not provided a statement demonstrating a connection between the comments and objection issues (see §§218.8(c) and 218.8(d)(6)).

(5) The objection does not provide sufficient information as required by §218.8(d)(5) and (6) for the reviewing officer to review.

(6) The objector withdraws the objection.

(7) An objector's identity is not provided or cannot be determined from the signature (written or electronically scanned) and a reasonable means of contact is not provided (see §218.8(d)(1) and (2)).

(8) The objection is illegible for any reason, including submissions in an electronic format different from that specified in the legal notice.

(9) The responsible official cancels the objection process underway to re-initiate the objection procedures at a later date or withdraw the proposed project or activity.

(b) The reviewing officer must give prompt written notice to the objector and the responsible official when an objection is set aside from review and must state the reasons for not reviewing the objection. If the objection is set aside from review for reasons of illegibility or lack of a means of contact, the reasons must be documented and a copy placed in the objection record.

### §218.11 Resolution of objections.

(a) *Meetings.* Prior to the issuance of the reviewing officer's written response, either the reviewing officer or the objector may request to meet to discuss issues raised in the objection and potential resolution. The reviewing officer has the discretion to determine whether adequate time remains in the review period to make a meeting with the objector practical, the appropriate date, duration, agenda, and location for any meeting, and how the meeting will be conducted to facilitate the most beneficial dialogue; e.g., face-to-face

## §218.12

office meeting, project site visit, teleconference, video conference, etc. The responsible official should be a participant along with the reviewing officer in any objection resolution meeting. Meetings are not required to be noticed but are open to attendance by the public, and the reviewing officer will determine whether those other than objectors may participate.

(b) *Reviewing officer's response to objections.* (1) A written response must set forth the reasons for the response, but need not be a point-by-point response and may contain instructions to the responsible official, if necessary. In cases involving more than one objection to a proposed project or activity, the reviewing officer may consolidate objections and issue one or more responses.

(2) No further review from any other Forest Service or USDA official of the reviewing officer's written response to an objection is available.

## §218.12 Timing of project decision.

(a) The responsible official may not sign a ROD or DN subject to the provisions of this part until the reviewing officer has responded in writing to all pending objections (see §218.11(b)(1)).

(b) The responsible official may not sign a ROD or DN subject to the provisions of this part until all concerns and instructions identified by the reviewing officer in the objection response have been addressed.

(c) When no objection is filed within the objection filing period (see §§218.26 and 218.32):

(1) The reviewing officer must notify the responsible official.

(2) Approval of the proposed project or activity documented in a ROD in accordance with 40 CFR 1506.10, or in a DN may occur on, but not before, the fifth business day following the end of the objection filing period.

(d) When a proposed project or activity is not subject to objection because no timely, specific written comments regarding the proposal were received during a designated opportunity for public comment (see §218.4), the approval of a proposed project or activity documented in a ROD must be in accordance with 40 CFR 1506.10 and 36 CFR 220.5(g), and the approval of a proposed project or activity documented

## 36 CFR Ch. II (7–1–14 Edition)

in a DN must be made in accordance with 36 CFR 220.7(c) and (d).

## §218.13 Secretary's authority.

(a) Nothing in this section shall restrict the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of National Forest System lands.

(b) Projects and activities proposed by the Secretary of Agriculture or the Under Secretary, Natural Resources and Environment, are not subject to the procedures set forth in this part. Approval of projects and activities by the Secretary or Under Secretary constitutes the final administrative determination of the U.S. Department of Agriculture.

## §218.14 Judicial proceedings.

(a) The objection process set forth in this subpart fully implements Congress' design for a predecisional administrative review process. These procedures present a full and fair opportunity for concerns to be raised and considered on a project-by-project basis. Individuals and groups must structure their participation so as to alert the local agency officials making particular land management decisions of their positions and contentions.

(b) Any filing for Federal judicial review of a decisions covered by this subpart is premature and inappropriate unless the plaintiff has exhausted the administrative review process set forth in this part (see 7 U.S.C. 6912(e) and 16 U.S.C. 6515(c)).

## §218.15 Information collection requirements.

The rules of this part specify the information that objectors must provide in an objection to a proposed project (see §218.8). As such, these rules contain information collection requirements as defined in 5 CFR part 1320. These information requirements are assigned OMB Control Number 0596–0172.

## §218.16 Effective dates.

(a) *Effective dates for HFRA-authorized projects.* (1) Provisions of this part that are applicable to hazardous fuel reduction projects authorized under the HFRA are in effect as of March 27, 2013